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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/509,232

09/24/2004

Harald Reiter

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05/09/2008

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

05/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/509,232 | Applicant(s) REITER ET AL. | |
| | Examiner ROBERT L. NASSER | Art Unit 3735 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The examiner notes that applicant's comments have been found convincing, more or less. However, the examiner found the Phipps reference which anticipates claim 1. Hence, a new rejection is being applied to the claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Phipps 6579321. Phipps shows a personal monitoring device including a sensor 16 including an ekg sensing device or similar sensor, a detection means to derive a feature indicative of abnormality from the sensor signal and triggers an alarm based on the feature (see for example – column 4, lines 14-15 and column 5, line 29), where the feature is a rate above a threshold, for example. Once triggered, the alarm signal is transmitted to PDU 14, where the alarm signal is the only signal that is sent. Claim 6 is rejected in that the feature is indicative of cardiac arrest – i.e. loss of pulse.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Lugo 6287252. With respect to claim 2, Phipps sends the signal immediately to the remote service center. However, Lugo teaches that by using a stationary in home relay, such as communications module 50, to transmit the signals to the remote station, the power requirements and size of the body mounted device may be kept to a minimum. Hence, it would have been obvious to modify Phipps to use such a communications module, to improve the efficiency of the device. When an alarm is initiated in Lugo, Lugo controls a cellular phone to make contact with a medical professional. Hence, it controls a domestic device. Hence, it would have been obvious to modify Phipps to control the cellular phone, as it is merely the substitution of one known transmission method for another. With respect to claim 4, the communications module of Lugo is mobile. In addition, Phipps transmits location information to aid in locating the patient.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Bornn et al 5348008. Bornn further teaches providing an out of range signal when the user is out of range of the station. As such, it would have been obvious to modify Phipps to indicate when the user is out of range, to ensure that the patient is continuously monitored.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Myklebust et al 6351671. Myklebust shows a remote monitoring device such as in Phipps where the, where the home unit includes a defibrillator/telephone combination

that allows a user to communicate with a professional for using the defibrillator. As such, it would have been obvious to modify Phipps et al to use such a defibrillator/telephone combination, to enable immediate treatment to be performed on the patient.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Tong 2003/0171661. Tong teaches the use of a motion sensor with an ekg system to compensate for the effects of motion artifact. As such, it would have been obvious to modify Phipps et al to use such a motion sensor, to eliminate errors in measurement.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Phipps in view of Tong, as applied to claim 8 above, further in view of Bornn et al. Phipps does not disclose the form of the sensing device. Bornn shows a device for the identical purpose that has the sensors incorporated into a garment. Hence, it would have been obvious to modify Phipps to use such a garment, as it is merely the substitution of one known equivalent sensor for another.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT L. NASSER whose telephone number is (571)272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner
Art Unit 3735

RLN
May 7, 2008